

**Nomination of Jeffrey Beavertstock to the
U.S. District Court for the Southern District of Alabama
Questions for the Record
Submitted October 24, 2017**

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

a. When, if ever, is it appropriate for a district court to depart from Supreme Court or the relevant circuit court's precedent?

RESPONSE: It is not appropriate for a district court to depart from precedent established by the Supreme Court or the relevant circuit court of appeals. If I am fortunate enough to be confirmed, I will endeavor to faithfully apply the precedents of the Supreme Court and the Eleventh Circuit Court of Appeals.

b. When, if ever, is it appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent?

RESPONSE: It is not appropriate for a district court to question Supreme Court or the relevant circuit court of appeals precedent. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow the law as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A textbook on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

a. Do you agree that *Roe v. Wade* is "super-stare decisis"? "superprecedent"?

RESPONSE: I am not familiar with the terms "super-stare decisis" and "superprecedent" beyond their apparent reference to the degree to which they are binding precedent. From the perspective of a district court judge, all decisions of the Supreme Court and the relevant circuit court of appeal are binding precedent that must be followed. If fortunate enough to be confirmed, I will endeavor to faithfully follow the law as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

b. Is it settled law?

RESPONSE: Yes, *Roe v. Wade* is a decision of the Supreme Court, which is

binding precedent that must be followed by district courts. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow *Roe* and all other precedent as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry.

a. Is the holding in *Obergefell* settled law?

RESPONSE: Yes, *Obergefell v. Hodges* is a decision of the Supreme Court, which is binding precedent that must be followed by district courts. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow *Obergefell* and all other precedent as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

- b. On Friday, June 30, the Texas Supreme Court issued a decision in *Pidgeon v. Turner* which narrowly interpreted *Obergefell* and questioned whether states were required to treat same-sex couples equally to opposite-sex couples outside the context of marriage licenses. The Texas Supreme Court stated that “The Supreme Court held in *Obergefell* that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons, and... it did not hold that the Texas DOMAs are unconstitutional.” Is this your understanding of *Obergefell*?**

RESPONSE: I am not familiar with the Texas Supreme Court’s opinion in *Pidgeon v. Turner*; however, the opinion of a state supreme court is not binding precedent on a district court. Furthermore, as a nominee for the district court, I believe it would be inappropriate for me to comment on issues that could potentially come before the court. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow *Obergefell* and all other precedent as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

4. In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms.”

a. Do you agree with Justice Stevens? Why or why not?

RESPONSE: Respectfully, as a nominee for the district court, I believe it would be inappropriate for me to comment on issues that could potentially come before the court. That said, *District of Columbia v. Heller*, like all decisions issued by

the Supreme Court, is binding precedent that must be followed by district courts. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow *Heller* and all other precedent as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

b. Did *Heller* leave room for common-sense gun regulation?

RESPONSE: Respectfully, as a nominee for the district court, I believe it would be inappropriate for me to comment on issues that could potentially come before the court. That said, *District of Columbia v. Heller*, like all decisions issued by the Supreme Court, is binding precedent and must be followed by district courts. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow *Heller* and all other precedent as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?

RESPONSE: I have not considered the issues raised in *Heller* in my years of legal practice and thus I am unable to comment on its relative place in Supreme Court jurisprudence. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow *Heller* and all other precedent as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

a. Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?

RESPONSE: Respectfully, as a nominee for the district court, I believe it would be inappropriate for me to comment on issues that could potentially come before the court. That said, *Citizens United v. FEC*, like all decisions issued by the Supreme Court, is binding precedent that must be followed by district courts. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow *Citizens United* and all other precedent as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

b. What is the right way to balance individual's First Amendment rights when corporations can, in effect, silence an individual through monetary spending?

RESPONSE: Respectfully, as a nominee for the district court, I believe it would be inappropriate for me to comment on issues that could potentially come before the court. That said, *Citizens United v. FEC*, like all decisions issued by the

Supreme Court, is binding precedent that must be followed by district courts. If I am fortunate enough to be confirmed, I will endeavor to faithfully follow *Citizens United* and all other precedent as set out by the Supreme Court and the Eleventh Circuit Court of Appeals.

6. Please explain your view of the appropriate temperament of a judge. Do you believe that you have the appropriate temperament to be a judge?

RESPONSE: I believe a judge should be patient, calm, and measured, and should treat everyone with dignity and respect. I also believe it is critical that a judge be committed to being fully prepared for each matter that comes before the court. As an Army officer for more than 26 years, I have learned to appreciate the value and humanity of each person I meet, as well as the value of diligent preparation. I have strived to incorporate these core values into my 19 years of practicing law. It has been my experience that the most effective and fair courtrooms operate with a foundation of dignity and respect for every person who appear before the court and a judge who has invested the time to be properly prepared for the matter at hand. My experiences in the Army and as a lawyer demonstrate I have the appropriate temperament to be a judge and if fortunate enough to be confirmed, it will my honor to serve all who come before the court.

7. District court judges often say that the most difficult aspect of their job is sentencing defendants. Judges also comment that one of the most complicated legal areas are decisions involving the United States Sentencing Guidelines. How do you plan to familiarize yourself with the Guidelines, and, more importantly, how do you plan to prepare yourself to sentence criminal defendants?

RESPONSE: I have already begun to study the materials available through the United States Sentencing Commission and I have spent time in court actually observing the Judges of the Southern District of Alabama sentencing defendants. Through this process I have had the opportunity to discuss many of the challenges and issues involved in sentencing with Judges, defense lawyers, prosecutors and probation officers. If fortunate enough to be confirmed, I will continue to diligently study the sentencing guidelines and continue to seek advice from the other Judges of the Southern District.

8. Please describe with particularity the process by which these questions were answered.

RESPONSE: I received these questions from the Department of Justice's Office of Legal Policy (OLP) on October 24, 2017. I reviewed the questions, and prepared these responses. I then returned my responses to OLP. Based on feedback I received from OLP, I edited my responses, and authorized OLP to submit them to the Senate Judiciary Committee.

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QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”

- a. Do you agree with Justice Roberts’ metaphor? Why or why not?

RESPONSE: I agree with Chief Justice Roberts' metaphor, and think it is a helpful approach for a judge to consider. A good umpire should have no interest in which team wins the game -- the umpire's sole focus is to make sure the rules are followed faithfully and applied fairly to both teams. Like the umpire, the role of a judge is to ensure the rules are followed in an impartial manner and to faithfully apply the law to the facts.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge's rendering of a decision?

RESPONSE: I believe that the practical consequences of any ruling should have no impact on a judge's decision-making process. Judges should faithfully apply the relevant law to the facts.

- c. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a judge to make a subjective determination?

RESPONSE: I do not agree. In the summary judgment context, material facts are either disputed or not, and this determination by a judge would be an objective finding rather than a subjective one. As Rule 56 notes, if there is a “genuine dispute as to any materials fact” summary judgment is inappropriate.

2. During Justice Sotomayor's confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old.”

- a. What role, if any, should empathy play in a judge's decision-making process?

RESPONSE: I do not believe it would be appropriate for a judge to allow empathy to enter into the decision-making process. Judges should strive to faithfully apply the law to the facts.

- b. What role, if any, should a judge's personal life experience play in his or her decision-making process?

RESPONSE: I do not believe a judge's personal life experience should play a role in his or her decision-making process. Judges should strive to faithfully apply the law to the facts. That said, I do believe a judge's life experiences play a role in the way that judge conducts himself or herself in court and the way they treat the people who appear in their court. If I am fortunate enough to be confirmed, I would bring a belief that everyone who comes into the court is due to be treated with dignity and respect. That is a value I learned at an early age from my family and that has matured throughout my 26 years of service as an Army officer and 19 years as a practicing lawyer.

- c. Do you believe you can empathize with "a young teenage mom," or understand what it is like to be "poor or African-American or gay or disabled or old"? If so, which life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?

RESPONSE: During my service in the Army, I serve closely with people from a wide range of racial, cultural, and economic backgrounds who come from an even wider range of family situations. In my civilian life, I am involved with Ransom Ministries in Mobile, Alabama, where I work with and serve the homeless and underemployed in our community. I am committed to making an effort to understand others' life experiences and the impact those experiences have on the way they see the world. If I am fortunate enough to be confirmed, I will bring these life experiences to bear as a judge, impartially applying the law to the facts and treating all who come before the court with dignity and respect.

3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

RESPONSE: No, it is never appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court.